

### REMARKS-General

The newly drafted independent claim 21 incorporates all structural limitations of the original claim 1 and includes further limitations previously brought forth in the disclosure. No new matter has been included. All new claims 21-38 are submitted to be of sufficient clarity and detail to enable a person of average skill in the art to make and use the instant invention, so as to be pursuant to 35 USC 112.

With regard to the rejection of record based on prior art, Applicant will advance arguments to illustrate the manner in which the invention defined by the newly introduced claims is patentably distinguishable from the prior art of record. Reconsideration of the present application is requested.

#### **Regarding to the Qualification of the Lunn (US 3,878,838) patent as Prior Art under 35USC102**

Pursuant to 35 U.S.C. 102, "a person shall be entitled to a patent unless:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

In view of 35 U.S.C. 102(b), it is apparent that a person shall not be entitled to a patent when his or her invention was patent in this country more than one year prior to the date of the application for patent in the United States.

However, the Lunn patent and the instant invention are not the same invention according to the fact that the disclosure of Lunn patent does not read upon the instant invention and the newly amended independent claim 21 of the instant invention does not read upon Lunn patent too. Apparently, the instant invention, which discloses seat belt massager, should not be the same invention as Lunn patent which discloses seat belt vibrator comprising a vibrator and means for securing the vibrator to the seat belt.

The applicant respectfully identifies the difference between the instant invention and Lunn patent in the following manner for overcoming the rejections based on 35USC102(b):

(a) Regarding the newly amended independent claim 21, Lunn discloses a seat belt assembly comprising a portable battery-operated vibrator, and means for securing the vibrator to the seat belt, wherein the means comprises a strap wrapped around the seat belt. The outer portion of the strap has a compartment means for holding the vibrator (Lunn, Claim 1). On the other hand, the seat belt massager of the instant invention comprises a massager body defining an **inner treatment surface**, a messaging device supported by the massager body, a massager device, **and a seat belt fastening arrangement** comprising a seat belt fastener which comprises **a first and a second elongated fastening straps** frontwardly extended from the massager body wherein two end portions of the fastening straps are adjustably and overlappedly communicating with each other to define a connecting loop within the two fastening straps and the massager body, such that the seat belt is adapted to slidably pass through the connecting loop so as to fasten with the massager body. The massaging device is supported on the message portion of the massager body and communicated with the treatment surface in such manner that the massaging device is adapted to effectively deliver massage impulse to an exterior of the massager body **only through the treatment surface**. Lunn patent is silent as to the massaging device delivering the massage impulse to the user **only through the single treatment surface**. This ensures direct and effective delivery of massage impulse. According to Fig. 1 to Fig. 4 of Lunn patent, the vibrator (12) delivers the impulse to the user through **at least a plurality of physical layers**, including the outer wall of the compartment (14), the outside portion (22) of the strap (16), and the stay (32) which "may be secured to the inner portion 24 of the strap 16 by suitable means" (Lunn, Col. 2, Lines 1-3). Thus, it is clear that the massage impulse of the vibrator in Lunn needs to penetrate **several** physical layers before reaching the user, thereby substantially reduce the extent of the massage impulse which user can receive via the seat belt assembly.

### **Response to Rejection of Claims 3-14 under 35USC103**

The Examiner rejected claims 3-14 over Lunn in view of Sears (US 4,846,157) and Aruin et al. (US 5,823,913). Pursuant to 35 U.S.C. 103:

“(a) A patent may not be obtained though the invention is **not identically** disclosed or described as set forth in **section 102 of this title**, if the **differences** between the subject matter sought to be patented and the prior art are such that the **subject matter as a whole would have been obvious** at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

In view of 35 U.S.C. 103(a), it is apparent that to be qualified as a prior art under 35USC103(a), the prior art must be cited under 35USC102(a)~(g) but the disclosure of the prior art and the invention are not identical and there are one or more differences between the subject matter sought to be patented and the prior art. In addition, such differences between the subject matter sought to be patented **as a whole** and the prior art are obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

In other words, the differences between the subject matter sought to be patent as a whole of the instant invention and Lunn which is qualified as prior art of the instant invention under 35USC102(b) are obvious in view of Sears at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains.

The applicant respectfully submits that the differences between the instant invention and Lunn in view of Sears and Aruin et al. are not obvious to one having ordinary skill in the art, due to the following reasons:

(b) Regarding the newly amended claim 22, both Lunn and Sears are silent that the massager body further has a receiving pocket formed on the massage portion, and defining an access opening which communicates the receiving pocket with an exterior of the massage body wherein the massaging device is completely **disposed** in the receiving pocket via the access opening.

(c) Regarding the newly amended claims 23-24, the examiner is of the view that it would have been obvious to one of ordinary skill in the art to modify Lunn to use conventional battery, motor and eccentric weight as taught by Sears to provide the details of the instant invention. The applicant respectfully submits that the massage device disclosed in claims 23-24 of the instant invention is not obvious to one of ordinary

skill in the art ***in addition to*** what is claimed in the newly amended independent claim 21. The invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") *In re Laskowski*, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") In *Sears*, the battery (12) and the signal generator (13) are utilized for a device for aiding abdominal muscle control. It does not suggest, teach or motivate the user of these devices on a seat belt massager.

Moreover, the examiner must note that in any case, even combining Lunn and *Sears* would not provide the invention as claimed -- a clear indicia of nonobviousness. *Ex parte Schwartz*, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed."). That is, modifying Lunn with *Sears*, as proposed by the Examiner, would not provide the seat belt massager as claimed in claims 23-24 and claim 21, not least because Lunn's seat belt vibrator does not teach, suggest or motivate a seat belt massager which delivers massaging impulse through a single physical layer, i.e. the inner treatment surface.

(d) Regarding the newly amended claims 21, and 25-28, both Lunn and *Sears* are silent as to the seat belt fastener comprising means for adjustably and detachably connecting the two end portions of the two fastening straps in the overlappedly communicating manner for defining the respective connecting loop of the seat belt fastener. It would not have been obvious to one of ordinary skill in the art to modify Lunn to produce the instant invention as claimed in claims 25-26 ***and*** claim 21. In

fact, both Lunn and Sears do not teach, motivate or suggest the use of fastening straps and hoop and loop fasteners for detachably and adjustably attach the seat belt massager to the seat belt.

(e) Regarding claims 33-34, the examiner is of the view that since Sears shows the pocket (14) in its muscle control device, it would have been obvious to one of ordinary skill in the art to modify Lunn in view of Sears for forming the instant invention as claimed in the originally filed claims 12-14. The examiner must be noted that Sears is dealing with a device for training muscles. It does not envisage any seat belt massager. On the other hand, Lunn does not envisage an **enclosed pocket** having a flipping cover for **completely** receiving the vibrator. Rather, Lunn's device comprises a stay (32) for 'preventing the strap 16 from wrinkling or buckling the belt 18 when the strap is wrapped around the belt 18' (Lunn, Col. 1, Line 65 – Col. 2, Line 1). Accordingly, the applicant respectfully submits that the flipping cover is not obvious to one of ordinary skill in the art over Lunn in view of Sears. After all, "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." *Libbey-Owens-Ford v. BOC Group*, 4 USPQ 2d 1097, 1103 (DCNJ 1987). The obviousness cannot be shown by combining the teachings of the prior art unless there is some teaching or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984); *In re Geiger*, 815 F.2d at 688, 2 USPQ2d at 1278 (Fed. Cir. 1987). There are none to suggest what is rejected both in Lunn and Sears.

(f) Regarding the newly amended claims 35-38, Lunn and Aruin et al. are silent as to the materials for fabricating the massager body. The applicant respectfully submits that element 14 in Aruin et al. is referring to a "spring element" in the disclosure. The spring element (14) "may be developed from foam material and has small stiffness that protects the switch against effects related for example to breathing" (Aruin et al. Col 3, Lines 27-30). It is clear that the spring element (14) is for protecting the switch and **not** for cushioning so as to impart maximum comfort to the user of the instant invention. In fact, the massaging device of the instant invention needs no protection because it is **completely** received and protected within the receiving pocket. Thus, either Lunn, Aruin et al, or a combination of both do not teach, suggest or motivate the use of pliable or fabric materials for fabricating the massager body. In any event, these features, **along**

***with what are claimed in the preceding claims***, would not have been obvious to one of ordinary skill in the art over Lunn in view of Aurin et al.

Applicant believes that for all of the foregoing reasons, all of the claims are in condition for allowance and such action is respectfully requested.

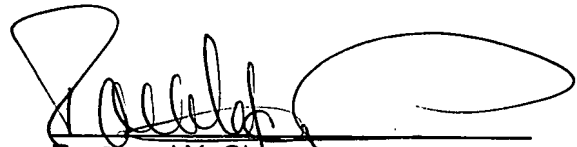
#### **The Cited but Non-Applied References**

The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejection are requested. Allowance of claims 21-38 at an early date is solicited.

Should the Examiner believe that anything further is needed in order to place the application in condition for allowance, he is requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

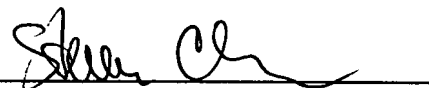


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#### CERTIFICATE OF MAILING

I hereby certify that this corresponding is being deposited with the United States Postal Service by First Class Mail, with sufficient postage, in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" on the date below.

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Person Signing: Steven Cheung